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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

EDUARDO GONZALEZ, ANTHONY
 OCAMPO, ENCARNACION
 GUTIERREZ, JOHAN MONTOYA,
 JUANCARLOS GÓMEZ-MONTEJANO,
 JENNIFER LU, AUSTIN CHU, IVY
 NGUYEN ANGELINE WU, ERIC
 FIGHT, CARLA GRUBB, DAVID
 CULPEPPER, PATRICE DOUGLASS,
 and ROBAIR SHERROD, on behalf of
 themselves and all others similarly situated,

Plaintiffs,

v.

ABERCROMBIE & FITCH STORES,
 INC., A&F CALIFORNIA, LLC, and A&F
 OHIO, INC.,

Defendants.

Case No. C03-2817 SI

**ANSWER OF DEFENDANTS
 ABERCROMBIE & FITCH STORES, INC.,
 A&F CALIFORNIA, LLC, AND A&F OHIO,
 INC., TO THIRD AMENDED CLASS
 ACTION COMPLAINT**

///

ANSWER TO THIRD AMENDED COMPLAINT

NOW COME Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC, and A&F Ohio, Inc. (collectively “Defendants”), by and through counsel, and for their Answer to the Third Amended Class Action Complaint (“Third Amended Complaint”) filed by Eduardo Gonzalez, Anthony Ocampo, Encarnacion Gutierrez, Johan Montoya, JuanCarlos Gómez-Montejano, Jennifer Lu, Austin Chu, Ivy Nguyen, Angeline Wu, Eric Fight, Carla Grubb, David Culpepper, Patrice Douglass, and Robair Sherrod (collectively “Plaintiffs”), hereby make the following admissions, denials, averments, and affirmative defenses:

1. For their response to paragraph 1 of Plaintiffs’ Third Amended Complaint, Defendants assert that A&F California, LLC operates retail clothing stores in California. Defendants state that A&F Ohio, Inc. operates retail clothing stores in Ohio. Defendants state that Abercrombie & Fitch Stores, Inc. operates retail clothing stores in some other states. Defendants deny the remaining allegations contained in paragraph 1 of the Third Amended Complaint.

2. Defendants deny the allegations contained in paragraph 2 of the Third Amended Complaint.

3. Defendants deny the allegations contained in paragraph 3 of the Third Amended Complaint.

4. For their response to paragraph 4 of the Third Amended Complaint, Defendants state that Abercrombie & Fitch Stores, Inc., A&F California, LLC, and A&F Ohio, Inc., maintain an Appearance/Look Policy, which has been revised from time to time. Defendants deny the remaining allegations contained in paragraph 4 of the Third Amended Complaint, including the allegation that the Appearance/Look Policy has any unlawfully discriminatory intent, effect, or is enforced in any unlawfully discriminatory manner.

5. Defendants deny the allegations contained in paragraph 5 of the Third Amended Complaint.

6. For their answer to paragraph 6 of the Third Amended Complaint, Defendants state that, until 1999 but not currently, some of Abercrombie & Fitch Co.’s subsidiaries published

1 and distributed a "Look Book" which, among other things, explained the Appearance/Look
 2 Policy. Defendants deny the remaining allegations contained in paragraph 6 of the Third
 3 Amended Complaint.

4 7. For their answer to paragraph 7 of the Third Amended Complaint, Defendants
 5 state that some stores have sold A&F Quarterly, that some stores display A&F TV, and that some
 6 stores have photographs of models wearing Abercrombie & Fitch clothing. Defendants deny the
 7 remaining allegations contained in paragraph 7 of the Third Amended Complaint.

8 8. For their answer to paragraph 8 of the Third Amended Complaint, Defendants
 9 state that regional and district managers occasionally make site visits to stores. Defendants deny
 10 the remaining allegations contained in paragraph 8 of the Third Amended Complaint.

11 9. For their answer to paragraph 9 of the Third Amended Complaint, Defendants
 12 state that some stores have sent pictures of brand representatives to headquarters. Defendants
 13 deny the remaining allegations contained in paragraph 9 of the Third Amended Complaint.

14 10. For their answer to paragraph 10 of the Third Amended Complaint, Defendants
 15 state that Abercrombie & Fitch Stores, Inc., A&F California, LLC, and A&F Ohio, Inc., recruit at
 16 various colleges across the United States. Defendants deny the remaining allegations contained
 17 in paragraph 10 of the Third Amended Complaint.

18 11. Defendants deny the allegations contained in paragraph 11 of the Third Amended
 19 Complaint.

20 12. Defendants deny the allegations contained in paragraph 12 of the Third Amended
 21 Complaint.

22 13. Defendants deny that this Court has jurisdiction over this action as pled.

23 14. Defendants deny that, as pled, venue is proper in this Court. Defendants deny that
 24 class certification is appropriate. Defendants Abercrombie & Fitch Stores, Inc., and A&F Ohio,
 25 Inc. deny that they operate any retail stores in California, and deny that they employ anyone in
 26 California. Defendants deny the remaining allegations contained in paragraph 14 of the Third
 27 Amended Complaint.

28 15. Defendants deny the allegations contained in paragraph 15 of the Third Amended

1 Complaint.

2 16. Defendants are without information sufficient to form a belief as to the truth or
3 falsity of the minority status, residency, or student enrollment information of Mr. Gonzalez and
4 therefore denies the same. Defendants deny all other allegations in paragraph 16 of the Third
5 Amended Complaint and specifically deny that they discriminated against Mr. Gonzalez on
6 account of his race, color, and/or national origin.

7 17. Defendants are without information sufficient to form a belief as to the truth or
8 falsity of the residency or student enrollment information of Mr. Ocampo and therefore deny the
9 same. Defendants deny all other allegations in paragraph 17 of the Third Amended Complaint
10 and specifically deny that they discriminated against Mr. Ocampo on account of his race, color,
11 and/or national origin.

12 18. Defendants admit that Plaintiff Encarnacion Gutierrez applied for a position in the
13 Third Street Promenade Abercrombie & Fitch store in or around July 2001 and admit that Mr.
14 Gutierrez was not hired. Defendants are without information sufficient to form a belief as to the
15 truth or falsity of his minority status or residency information and therefore deny the same.
16 Defendants deny all other allegations in paragraph 18 of the Third Amended Complaint and
17 specifically deny that they discriminated against Mr. Gutierrez on account of his race, color,
18 and/or national origin.

19 19. Defendants admit that Plaintiff Johan Montoya applied for a position at the
20 Topanga Mall Abercrombie & Fitch store in or around August 2002 and admit Mr. Montoya was
21 not hired. Defendants are without information sufficient to form a belief as to the truth or falsity
22 of his minority status, residency and student enrollment information and therefore deny the same.
23 Defendants deny all other allegations in paragraph 19 of the Third Amended Complaint and
24 specifically deny that they discriminated against Mr. Montoya on account of his race, color,
25 and/or national origin.

26 20. Defendants admit that Plaintiff Juancarlos Gómez-Montejano was employed at the
27 Third Street Promenade Abercrombie & Fitch store beginning in November 1998, but deny that
28 he was employed until April 1999. Defendants deny that Mr. Gómez-Montejano was employed

1 as a Brand Representative. Defendants further assert that Mr. Gómez-Montejano applied and was
 2 hired for a temporary position as an Overnight at the Century City Abercrombie & Fitch store,
 3 where he worked for a short time. Defendants deny that they discriminated against Mr. Gómez-
 4 Montejano on account of his race, color, and/or national origin. Defendants are without
 5 information sufficient to form a belief as to the truth or falsity of the remaining allegations
 6 contained in paragraph 20 of the Third Amended Complaint and therefore deny same.

7 21. Defendants admit that Plaintiff Jennifer Lu was employed as a Brand
 8 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa, California,
 9 but deny that she was employed from September 2000 through February 2003. Defendants deny
 10 that Ms. Lu was terminated on account of her race, color, and/or national origin. Defendants are
 11 without information sufficient to form a belief as to the truth or falsity of the remaining
 12 allegations contained in paragraph 21 of the Third Amended Complaint and therefore deny same.

13 22. Defendants admit that Plaintiff Austin Chu was employed as a Brand
 14 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa, California.
 15 Defendants deny that Mr. Chu was employed from June 2001 through March 2003. Defendants
 16 deny that Mr. Chu was constructively discharged on account of his race, color, and/or national
 17 origin. Defendants are without information sufficient to form a belief as to the truth or falsity of
 18 the remaining allegations contained in paragraph 22 of the Third Amended Complaint and
 19 therefore deny same.

20 23. Defendants admit that Plaintiff Ivy Nguyen was employed as a Brand
 21 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa, California.
 22 Defendants deny that Ms. Nguyen was terminated on account of her race, color, national origin,
 23 and/or gender. Defendants are without information sufficient to form a belief as to the truth or
 24 falsity of the remaining allegations contained in paragraph 23 of the Third Amended Complaint
 25 and therefore deny same.

26 24. Defendants admit that Plaintiff Angeline Wu was employed as a Brand
 27 Representative in the Abercrombie & Fitch store at Crystal Court Mall in Costa Mesa, California.
 28 Defendants deny that Ms. Wu was terminated on account of her race, color, national origin,

1 and/or gender. Defendants are without information sufficient to form a belief as to the truth or
2 falsity of the remaining allegations contained in paragraph 24 of the Third Amended Complaint
3 and therefore deny same.

4 25. Defendants state that Plaintiff Eric Fight was employed from June 3, 2003 to June
5 13, 2003. Defendants deny that Mr. Fight was constructively discharged. Defendants also deny
6 that they discriminate based on race or color. Defendants are without sufficient information to
7 form a belief as to the truth or falsity of the remaining allegations contained in paragraph 25 of
8 the Third Amended Complaint, and therefore deny the same.

9 26. Defendants state that Ms. Grubb was employed as a Brand Representative from
10 November 17, 2002 until December 31, 2002. Defendants are without sufficient information to
11 form a belief as to the truth or falsity of the residency or student enrollment information of Ms.
12 Grubb, and therefore deny the same. Defendants deny all other allegations in paragraph 26 of the
13 Third Amended Complaint and deny specifically that she was constructively discharged on
14 account of her race or color.

15 27. Defendants are without sufficient information to form a belief as to the truth or
16 falsity of the residency, student enrollment, or minority status of Mr. Culpepper, and therefore
17 deny the same. Defendants deny all other allegations in paragraph 27 of the Third Amended
18 Complaint, and deny specifically that he was denied positions due to his race or color.

19 28. Defendants are without sufficient information to form a belief as to the truth or
20 falsity of the residency, student enrollment, or minority status of Ms. Douglass. Defendants deny
21 all other allegations in paragraph 28 of the Third Amended Complaint, and deny specifically that
22 she was denied a position due to her race, color, or national origin.

23 29. Defendants are without sufficient information to form a belief as to the truth or
24 falsity of the residency, student enrollment, or minority status of Mr. Sherrod. Defendants deny
25 all other allegations in paragraph 29 of the Third Amended Complaint, and deny specifically that
26 he was denied a position due to his race, color, or national origin.

27 30. For their answer to paragraph 30 of the Third Amended Complaint, Defendants
28 state that Abercrombie & Fitch Stores, Inc. is an Ohio corporation. A separate corporate entity,

1 Abercrombie & Fitch Stores, Inc., a Delaware corporation, which is now known as Abercrombie
 2 & Fitch Management Co., operated all Abercrombie stores from July 1996 until August 9, 2000.
 3 From August 9, 2000 until April 26, 2002, Abercrombie & Fitch Stores, Inc., the Ohio
 4 corporation, operated all Abercrombie stores. Since May 2002, Abercrombie & Fitch Stores,
 5 Inc., the Ohio corporation, has operated all Abercrombie stores outside of the states of California
 6 and Ohio. Defendants deny the remaining allegations contained in paragraph 30 of the Third
 7 Amended Complaint.

8 31. For their answer to paragraph 31 of the Third Amended Complaint, Defendants
 9 state that A & F California, LLC is an Ohio limited liability company which has operated all
 10 Abercrombie stores within the State of California since on or about May 3, 2002. Defendants
 11 deny the remaining allegations contained in paragraph 31 of the Third Amended Complaint.

12 32. For their answer to paragraph 32 of the Third Amended Complaint, Defendants
 13 state that A & F Ohio, Inc. is an Ohio corporation which has operated all Abercrombie stores in
 14 Ohio since on or about April 26, 2002. Defendants deny the remaining allegations contained in
 15 paragraph 32 of the Third Amended Complaint.

16 33. For their answer to paragraph 33 of the Third Amended Complaint, Defendants
 17 state that they operate retail clothing stores in a number of states. Defendants state that their
 18 aggregate net sales in fiscal year 2002 were approximately \$1.6 billion. In 2003, Defendants
 19 operated approximately 600 stores. Defendants deny the remaining allegations contained in
 20 paragraph 33 of the Third Amended Complaint.

21 34. For their answer to paragraph 34 of the Third Amended Complaint, Defendants
 22 state that they operate stores under the names: "Abercrombie & Fitch," "Hollister," and
 23 "Abercrombie." Defendants deny the remaining allegations contained in paragraph 34 of the
 24 Third Amended Complaint.

25 35. Defendants state that Plaintiffs purport to bring a class action pursuant to the
 26 Federal Rules of Civil Procedure. Defendants deny that class certification is appropriate.
 27 Defendants deny the remaining allegations contained in paragraph 35 of the Third Amended
 28 Complaint.

1 36. Defendants state that Plaintiffs purport to bring a class action pursuant to the
2 Federal Rules of Civil Procedure. Defendants deny that all of the Plaintiffs are members of the
3 class they seek to represent. Defendants deny that class certification is appropriate. Defendants
4 deny the remaining allegations contained in paragraph 36 of the Third Amended Complaint.

5 37. Defendants deny the allegations contained in paragraph 37 of the Third Amended
6 Complaint.

7 38. Defendants deny the allegations contained in paragraph 38 of the Third Amended
8 Complaint.

9 39. Defendants deny the allegations contained in paragraph 39 of the Third Amended
10 Complaint.

11 40. Defendants deny the allegations contained in paragraph 40 of the Third Amended
12 Complaint.

13 41. Defendants deny the allegations contained in paragraph 41 of the Third Amended
14 Complaint.

15 42. Defendants deny the allegations contained in paragraph 42 of the Third Amended
16 Complaint.

17 43. Defendants admit that Plaintiff Eduardo Gonzalez was not hired as a Brand
18 Representative. Defendants deny that Mr. Gonzalez was not hired based on his race, color, and/or
19 national origin. Defendants are without information sufficient to form a belief as to the truth or
20 falsity of the remaining allegations contained in paragraph 43 of the Third Amended Complaint
21 and therefore deny same.

22 44. Defendants deny the allegations contained in paragraph 44 of the Third Amended
23 Complaint.

24 45. Defendants admit that Mr. Gonzalez filed a charge of discrimination with the
25 Equal Employment Opportunity Commission on or about April 25, 2003 and that a copy of the
26 charge was attached to the Complaint served on Defendants as Exhibit A. Defendants deny the
27 allegations in the charge. Upon information and belief, Defendants admit that the EEOC issued
28 Mr. Gonzalez a notice of right to sue on or above December 30, 2003, and that a copy of that

1 notice was attached as Exhibit P to the Complaint served on Defendants.

2 46. Defendants admit that Plaintiff Anthony Ocampo worked as a part-time Brand
3 Representative in the Glendale Galleria store beginning in December 1999. Defendants deny that
4 Mr. Ocampo worked until January 2000, but aver that Mr. Ocampo worked until February 2000.
5 Defendants are without information sufficient to form a belief as to the truth or falsity of the
6 remaining allegations contained in paragraph 46 of the Third Amended Complaint and therefore
7 deny the same.

8 47. Defendants deny the allegations contained in paragraph 47 of the Third Amended
9 Complaint.

10 48. Defendants deny the allegations contained in paragraph 48 of the Third Amended
11 Complaint.

12 49. Defendants deny the allegations contained in paragraph 49 of the Third Amended
13 Complaint.

14 50. Defendants admit that Plaintiff Encarnacion Gutierrez applied for a job at the
15 Abercrombie & Fitch store at the Third Street Promenade in or around July 2001. Defendants
16 deny that Mr. Gutierrez was refused hire based on his race, color, and/or national origin.
17 Defendants are without information sufficient to form a belief as to the truth or falsity of the
18 remaining allegations contained in paragraph 50 of the Third Amended Complaint and therefore
19 deny the same.

20 51. Defendants deny the allegations contained in paragraph 51 of the Third Amended
21 Complaint.

22 52. Defendants deny the allegations contained in paragraph 52 of the Third Amended
23 Complaint.

24 53. Defendants admit that Mr. Gutierrez filed a charge of discrimination with the
25 EEOC on or about May 21, 2002 and that a copy of said charge was attached to the Third
26 Amended Complaint served on Defendants as Exhibit B. Defendants deny the allegations in the
27 charge. Upon information and belief, Defendants admit that the EEOC issued a notice of right to
28 sue on or about December 30, 2003, and that a copy of that notice was attached as Exhibit Q to

1 the Complaint served on Defendants.

2 54. Defendants admit that Plaintiff Johan Montoya applied for a position at the
3 Abercrombie & Fitch store at the Topanga Mall in Canoga Park, California, in or about August
4 2002 and that he was not hired. Defendants are without information sufficient to form a belief as
5 to the truth or falsity of whether Mr. Montoya is a Latino male and is a student at the University
6 of California at Santa Barbara and therefore deny the same. Defendants deny the remaining
7 allegations contained in paragraph 54 of the Third Amended Complaint.

8 55. Defendants deny the allegations contained in paragraph 55 of the Third Amended
9 Complaint.

10 56. Defendants admit that Mr. Montoya filed a charge of discrimination with the
11 EEOC on or about April 22, 2003, that a copy of that charge was attached to the Third Amended
12 Complaint served on Defendants as Exhibit C, but deny the allegations in the charge. Upon
13 information and belief, Defendants admit that the EEOC issued Mr. Montoya a notice of right to
14 sue on or about December 30, 2003, and that a copy of the notice was attached as Exhibit R to the
15 Complaint served on Defendants.

16 57. Defendants admit that Plaintiff Juancarlos Gómez-Montejano, a Latino male,
17 worked at the Abercrombie & Fitch store at the Third Street Promenade in Santa Monica,
18 California. Defendants are without information sufficient to form a belief as to the truth or falsity
19 of the allegation that Mr. Gómez-Montejano is or was a student at the University of California at
20 Los Angeles and therefore deny same. Defendants deny the remaining allegations contained in
21 paragraph 57 of the Third Amended Complaint.

22 58. Defendants deny the allegations contained in paragraph 58 of the Third Amended
23 Complaint.

24 59. Defendants deny the allegations contained in paragraph 59 of the Third Amended
25 Complaint.

26 60. Defendants admit that Mr. Gómez-Montejano filed a charge of discrimination with
27 the EEOC on or about December 21, 1999 and that a copy of that charge was attached to the
28 Third Amended Complaint served on Defendants as Exhibit D. Defendants admit that the EEOC

1 issued a Letter of Determination and that a copy of that Letter was attached to the Third Amended
 2 Complaint served on Defendants as Exhibit E. Defendants deny the allegations in the charge and
 3 deny that the Letter of Determination was properly issued, and similarly deny that the Letter of
 4 Determination reached the correct conclusion. Defendants admit that the DFEH issued to Mr.
 5 Gómez-Montejano a Notice of Right to sue on or about December 21, 1999 and that a copy of
 6 that notice was attached to the Third Amended Complaint served on Defendants as Exhibit F.
 7 Defendants admit that the EEOC issued to Mr. Gómez-Montejano a notice of right to sue on or
 8 about December 30, 2003, and that a copy of that notice was attached to the Complaint served on
 9 Defendants as Exhibit S.

10 61. Defendants admit that Plaintiff Jennifer Lu worked as a Brand Representative at
 11 the Abercrombie & Fitch store at the Crystal Court Mall in Costa Mesa, California but deny that
 12 Ms. Lu worked there from September 2000 through February 2003. Defendants admit that Ms.
 13 Lu is an Asian American female and are without information sufficient to form a belief as to
 14 whether she is a student at the University of California at Irvine and therefore deny same.
 15 Defendants deny the remaining allegations contained in paragraph 61 of the Third Amended
 16 Complaint.

17 62. Defendants admit that in or around January 2003, certain headquarters and
 18 regional employees visited the Abercrombie & Fitch store at the Crystal Court Mall. Defendants
 19 deny the remaining allegations contained in paragraph 62 of the Third Amended Complaint.

20 63. Defendants deny the allegations contained in paragraph 63 of the Third Amended
 21 Complaint.

22 64. Defendants deny the allegations contained in paragraph 64 of the Third Amended
 23 Complaint.

24 65. Defendants admit that Ms. Lu filed a charge of discrimination with the EEOC on
 25 or about April 22, 2003, that a copy of that charge was attached to the Third Amended Complaint
 26 served on Defendants as Exhibit G, and deny the allegations in the charge. Defendants admit that
 27 the DFEH issued a Notice of Right to Sue dated April 29, 2003, a copy of which was attached to
 28 the Third Amended Complaint served on Defendants as Exhibit G. Upon information and belief,

1 Defendants admit that the EEOC issued Ms. Lu a notice of right to sue on or about December 30,
2 2003, and that a copy of that notice was attached as Exhibit T to the Complaint served on
3 Defendants.

4 66. Defendants admit that Plaintiff Austin Chu worked as a Brand Representative at
5 the Abercrombie & Fitch store at the Crystal Court Mall in Costa Mesa, California, and that he is
6 an Asian American male, but deny that Mr. Chu worked from June 2001 through March 2003.
7 Defendants deny that Mr. Chu was constructively discharged. Defendants are without
8 information sufficient to form a belief as to the truth or falsity of the remaining allegations
9 contained in paragraph 66 of the Third Amended Complaint and therefore deny same.

10 67. Defendants admit that Mr. Chu tendered his resignation in or about March, 2003.
11 Defendants deny the remaining allegations contained in paragraph 67 of the Third Amended
12 Complaint.

13 68. Defendants deny the allegations contained in paragraph 68 of the Third Amended
14 Complaint.

15 69. Defendants admit that Mr. Chu filed a charge of discrimination with the EEOC on
16 or about April 22, 2003, that a copy was attached to the Complaint served on Defendants as
17 Exhibit H, and deny the allegations in the charge. Defendants admit that the DFEH issued a
18 Notice of Right to Sue dated April 29, 2003, a copy of which was attached to the Third Amended
19 Complaint served on Defendants at Exhibit H. Upon information and belief, Defendants admit
20 that the EEOC issued a notice of right to sue to Mr. Chu on December 30, 2003, and that a copy
21 of the notice was attached to the Complaint served on Defendants at Exhibit U.

22 70. Defendants admit that Plaintiff Ivy Nguyen worked as a Brand Representative at
23 the Abercrombie & Fitch store at the Crystal Court store in Costa Mesa, California and that she is
24 an Asian American female. Defendants are without information sufficient to form a belief as to
25 the truth or falsity of the allegation that Ms. Nguyen is a student of the University of California at
26 Irvine and therefore deny same. Defendants deny the remaining allegations contained in
27 paragraph 70 of the Third Amended Complaint.

28 71. Defendants deny the allegations contained in paragraph 71 of the Third Amended

1 Complaint.

2 72. Defendants deny the allegations contained in paragraph 72 of the Third Amended
3 Complaint.

4 73. Defendants deny the allegations contained in paragraph 73 of the Third Amended
5 Complaint.

6 74. Defendants admit that Ms. Nguyen filed a charge of discrimination with the EEOC
7 on or about June 16, 2003, that a copy of that charge was attached to the Third Amended
8 Complaint served on Defendants as Exhibit I, and deny the allegations in the charge. Upon
9 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Ms.
10 Nguyen on December 30, 2003, and that a copy of that notice was attached to the Complaint
11 served on Defendants at Exhibit V.

12 75. Defendants admit that Plaintiff Angeline Wu worked as a Brand Representative at
13 the Abercrombie & Fitch store at the Crystal Court store in Costa Mesa, California, and that she is
14 an Asian American female. Defendants are without information sufficient to form a belief as to
15 the truth or falsity of the remaining allegations contained in paragraph 75 of the Third Amended
16 Complaint and therefore deny same.

17 76. Defendants deny the allegations contained in paragraph 76 of the Third Amended
18 Complaint.

19 77. Defendants deny the allegations contained in paragraph 77 of the Third Amended
20 Complaint.

21 78. Defendants deny the allegations contained in paragraph 78 of the Third Amended
22 Complaint.

23 79. Defendants deny the allegations contained in paragraph 79 of the Third Amended
24 Complaint.

25 80. Defendants admit that Ms. Wu filed a charge of discrimination with the EEOC on
26 or about April 17, 2003, that a copy of that charge was attached to the Third Amended Complaint
27 served on Defendants as Exhibit J, and deny the allegations in the charge. Defendants admit that
28 the DFEH issued a Notice of Right to Sue dated April 22, 2003, a copy of which was attached to

1 the Third Amended Complaint served on Defendants at Exhibit J. Upon information and belief,
 2 Defendants admit that the EEOC issued a notice of right to sue to Ms. Wu on December 30, 2003,
 3 and that a copy of that notice was attached to the Complaint served on Defendants at Exhibit W.

4 81. Defendants state that Mr. Fight was employed from June 3, 2003 until June 13,
 5 2003, at which point Mr. Fight resigned his employment. Defendants deny that Mr. Fight was
 6 constructively discharged, and also deny that he was not allowed to work on the sales floor due to
 7 his race or color. Defendants are without sufficient information to form a belief as to the
 8 residence or minority status of Mr. Fight, and therefore deny same. Defendants deny the
 9 remaining allegations contained in paragraph 81 of the Third Amended Complaint.

10 82. Defendants deny that Mr. Fight was denied hire due to his race or color.
 11 Defendants are without sufficient information to form a belief as to the remaining allegations
 12 contained in paragraph 82 of the Third Amended Complaint, and therefore deny same.

13 83. Defendants state that Mr. Fight was hired on or about June 3, 2003. Defendants
 14 are without sufficient information to form a belief as to the truth or falsity of the allegations
 15 contained in paragraph 83 of the Third Amended Complaint, and therefore deny same.

16 84. Defendants deny that Mr. Fight was constructively discharged, and also deny that
 17 he was not considered for a Brand Representative position due to his race or color. Defendants
 18 are without sufficient information to form a belief as to the remaining allegations contained in
 19 paragraph 84 of the Third Amended Complaint, and therefore deny the same.

20 85. Defendants specifically deny that Mr. Fight was discharged. Defendants are
 21 without sufficient information to form a belief as to the truth or falsity of the remaining
 22 allegations contained in paragraph 85 of the Third Amended Complaint, and therefore deny same.

23 86. Defendants deny the allegations contained in paragraph 86 of the Third Amended
 24 Complaint.

25 87. Defendants state that Mr. Fight filed a charge of discrimination with the EEOC on
 26 or about August 16, 2003, that a copy of that charge was attached to the Third Amended
 27 Complaint served on Defendants as Exhibit K, and deny the allegations in the charge. Upon
 28 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Mr.

1 Fight on December 30, 2003, and that a copy of that notice was attached to the Complaint served
2 on Defendants at Exhibit X.

3 88. Defendants state that Ms. Grubb was employed as a Brand Representative from
4 November 17, 2002 until December 31, 2002. Defendants are without sufficient information to
5 form a belief as to the truth or falsity of Ms. Grubb's minority status or the allegation that she is a
6 student. Defendants deny the remaining allegations contained in paragraph 88 of the Third
7 Amended Complaint, and specifically deny that Ms. Grubb was constructively discharged.

8 89. Defendants state that Ms. Grubb was employed as a Brand Representative from
9 November 17, 2002 until December 31, 2002. Defendants deny the remaining allegations
10 contained in paragraph 89 of the Third Amended Complaint.

11 90. Defendants deny the allegations contained in paragraph 90 of the Third Amended
12 Complaint.

13 91. Defendants deny the allegations contained in paragraph 91 of the Third Amended
14 Complaint.

15 92. Defendants deny the allegations contained in paragraph 92 of the Third Amended
16 Complaint.

17 93. Defendants state that Ms. Grubb filed a charge of discrimination with the EEOC
18 on or about August 16, 2003, that a copy of that charge was attached to the Third Amended
19 Complaint served on Defendants as Exhibit L, and deny the allegations in the charge. Upon
20 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Ms.
21 Grubb on December 30, 2003, and that a copy of that notice was attached to the Complaint served
22 on Defendants at Exhibit Y.

23 94. Defendants deny that Mr. Culpepper was denied positions as a Brand
24 Representative on account of his race or color. Defendants are without sufficient information to
25 form a belief as to the truth or falsity of the remaining allegations contained in paragraph 94 of
26 the Third Amended Complaint, and therefore deny same.

27 95. Defendants are without sufficient information to form a belief as to the truth or
28 falsity of the allegations contained in paragraph 95 of the Third Amended Complaint, and

1 therefore deny same.

2 96. Defendants are without sufficient information to form a belief as to the truth or
3 falsity of the allegations contained in paragraph 96 of the Third Amended Complaint, and
4 therefore deny same.

5 97. Defendants are without sufficient information to form a belief as to the truth or
6 falsity of the allegations contained in paragraph 97 of the Third Amended Complaint, and
7 therefore deny same.

8 98. Defendants deny the allegations contained in paragraph 98 of the Third Amended
9 Complaint.

10 99. Defendants state that Mr. Culpepper filed a charge of discrimination with the
11 EEOC on or about August 16, 2003, that a copy of that charge was attached to the Third
12 Amended Complaint served on Defendants as Exhibit M, and deny the allegations in the charge.
13 Upon information and belief, Defendants admit that Mr. Culpepper was issued a notice of right to
14 sue by the EEOC on December 30, 2003, and that a copy of the notice was attached to the
15 Complaint served on Defendants at Exhibit Z.

16 100. Defendants deny that Ms. Douglass was denied a position as a Brand
17 Representative on account of her race, color, and/or national origin. Defendants are without
18 sufficient information to form a belief as to the truth or falsity of the remaining allegations
19 contained in paragraph 100 of the Third Amended Complaint, and therefore deny the same.

20 101. Defendants are without sufficient information to form a belief as to the truth or
21 falsity of the allegations contained in paragraph 101 of the Third Amended Complaint, and
22 therefore deny the same.

23 102. Defendants are without sufficient information to form a belief as to the truth or
24 falsity of the information contained in paragraph 102 of the Third Amended Complaint, and
25 therefore deny the same.

26 103. Defendants deny the allegations contained in paragraph 103 of the Third Amended
27 Complaint.

28 104. Defendants state that Ms. Douglass filed a charge of discrimination with the EEOC

1 on or about December 23, 2003, and that a copy of that charge was attached to the Third
2 Amended Complaint served on Defendants as Exhibit N, and deny the allegations in the charge.
3 Upon information and belief, Defendants admit that the EEOC issued Ms. Douglass a notice of
4 right to sue on December 30, 2003, and that a copy of that notice was attached to the Complaint
5 served on Defendants at Exhibit AA.

6 105. Defendants deny that Mr. Sherrod was denied positions as a Brand Representative
7 on account of his race, color, and/or national origin. Defendants are without sufficient
8 information to form a belief as to the truth or falsity of the remaining allegations contained in
9 paragraph 105 of the Third Amended Complaint, and therefore deny the same.

10 106. Defendants are without sufficient information to form a belief as to the truth or
11 falsity of the allegations contained in paragraph 106 of the Third Amended Complaint, and
12 therefore deny the same.

13 107. Defendants deny the allegations contained in paragraph 107 of the Third Amended
14 Complaint.

15 108. Defendants state that Mr. Sherrod filed a charge of discrimination with the EEOC
16 on or about December 1, 2003, that a copy of that charge was attached to the Third Amended
17 Complaint served on Defendants as Exhibit O, and deny the allegations in the charge. Upon
18 information and belief, Defendants admit that the EEOC issued a notice of right to sue to Mr.
19 Sherrod on December 30, 2003, and that a copy of the notice was attached to the Complaint
20 served on Defendants at Exhibit BB.

21 109. Defendants deny the allegations contained in paragraph 109 of the Complaint.

22 110. Defendants admit that the EEOC issued a Letter of Determination on September
23 13, 2001, attached to the Third Amended Complaint as Exhibit E. Defendants deny that the
24 Letter of Determination was properly issued, and similarly denies that the Letter of Determination
25 reached the correct conclusion.

26 111. Upon information and belief, Defendants admit the allegations contained in
27 paragraph 111 of the Third Amended Complaint.

28 112. Defendants deny the allegations contained in paragraph 112 of the Third Amended

1 Complaint.

2 113. Defendants deny the allegations contained in paragraph 113 of the Third Amended
3 Complaint.

4 114. Defendants deny the allegations contained in paragraph 114 of the Third Amended
5 Complaint. Defendants deny the allegations contained in the sub-parts of paragraph 114 of the
6 Third Amended Complaint.

7 115. For their answer to paragraph 115 of the Third Amended Complaint, Defendants
8 reincorporate and reallege each of the admissions, statements and denials contained in their
9 answer to paragraphs 1 through 114 of the Third Amended Complaint, as if fully restated herein.

10 116. Defendants state that Plaintiffs purport to bring a class action under the Federal
11 Rules of Civil Procedure. Defendants deny that class certification is appropriate. Defendants
12 deny the remaining allegations contained in paragraph 116 of the Third Amended Complaint.

13 117. Defendants deny the allegations contained in paragraph 117 of the Third Amended
14 Complaint.

15 118. Defendants deny the allegations contained in paragraph 118 of the Third Amended
16 Complaint.

17 119. Defendants admit that the EEOC issued a Letter of Determination on September
18 13, 2001, attached to the Third Amended Complaint as Exhibit E. Defendants deny that the
19 Letter of Determination was properly issued, and similarly denies that the Letter of Determination
20 reached the correct conclusion.

21 120. Defendants deny the allegations contained in paragraph 120 of the Third Amended
22 Complaint.

23 121. In response to paragraph 121 of the Third Amended Complaint, Defendants deny
24 that the requested relief, or any relief whatsoever, is proper. Defendants deny the remaining
25 allegations contained in paragraph 121 of the Third Amended Complaint.

26 122. For their answer to paragraph 122 of the Third Amended Complaint, Defendants
27 reincorporate each of the admissions, statements and denials contained in their answer to
28 paragraphs 1 through 121 of the Third Amended Complaint, as if fully restated herein.

1 123. Defendants state that Plaintiffs purport to bring a class action pursuant to the
2 Federal Rules of Civil Procedure. Defendants deny that class certification is appropriate.
3 Defendants deny the remaining allegations contained in paragraph 123 of the Third Amended
4 Complaint.

5 124. Defendants deny the allegations contained in paragraph 124 of the Third Amended
6 Complaint.

7 125. Defendants deny the allegations contained in paragraph 125 of the Third Amended
8 Complaint.

9 126. For their answer to paragraph 126 of the Third Amended Complaint, Defendants
10 deny that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the
11 remaining allegations contained in paragraph 126 of the Third Amended Complaint.

12 127. For their answer to paragraph 127 of the Third Amended Complaint, Defendants
13 reincorporate and reallege each of the admissions, statements and denials contained in their
14 answer to paragraphs 1 through 126 of the Third Amended Complaint, as if fully restated herein.

15 128. Defendants deny the allegations contained in paragraph 128 of the Third Amended
16 Complaint.

17 129. Defendants deny that Plaintiffs have timely complied with all prerequisites to suit.
18 Defendants deny the remaining allegations contained in paragraph 129 of the Third Amended
19 Complaint.

20 130. Defendants deny that the requested relief or any relief is proper.

21 131. For their answer to paragraph 131 of the Third Amended Complaint, Defendants
22 reincorporate and reallege each of the admissions, statements and denials contained in their
23 answer to paragraphs 1 through 130 of the Third Amended Complaint, as if fully restated herein.

24 132. Defendants deny the allegations contained in paragraph 132 of the Third Amended
25 Complaint.

26 133. Defendants deny the allegations contained in paragraph 133 of the Third Amended
27 Complaint.

28 134. Defendants deny the allegations contained in paragraph 134 of the Third Amended

1 Complaint.

2 135. Defendants deny the allegations contained in paragraph 135 of the Third Amended
3 Complaint.

4 136. Defendants deny that the requested relief or any relief is proper.

5 137. For their answer to paragraph 137 of the Third Amended Complaint, Defendants
6 reincorporate and reallege each of the admissions, statements and denials contained in their
7 answer to paragraphs 1 through 136 of the Third Amended Complaint, as if fully restated herein.

8 138. Defendants deny the allegations contained in paragraph 138 of the Third Amended
9 Complaint.

10 139. Defendants deny the allegations contained in paragraph 139 of the Third Amended
11 Complaint.

12 140. Defendants deny that the requested relief or any relief is proper.

13 141. Defendants deny the allegations contained in paragraph 141 of the Third Amended
14 Complaint.

15 142. Defendants deny the allegations contained in paragraph 142 of the Third Amended
16 Complaint.

17 143. Defendants deny the allegations contained in paragraph 143 of the Third Amended
18 Complaint.

19 144. Defendants deny the allegations contained in paragraph 144 of the Third Amended
20 Complaint.

21 145. Defendants deny that class certification is appropriate. Defendants deny the
22 remaining allegations contained in paragraph 145 of the Third Amended Complaint.

23 146. Defendants deny that the named plaintiffs are adequate class representatives and
24 deny that class certification is appropriate. Defendants deny the remaining allegations contained
25 in paragraph 146 of the Third Amended Complaint.

26 147. Defendants deny that class certification is appropriate and deny that named
27 plaintiffs' counsel should be designated class counsel. Defendants deny the remaining allegations
28 contained in paragraph 147 of the Third Amended Complaint.

1 148. In response to paragraph 148 of the Third Amended Complaint, Defendants deny
2 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
3 allegations contained in paragraph 148 of the Third Amended Complaint.

4 149. In response to paragraph 149 of the Third Amended Complaint, Defendants deny
5 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
6 allegations contained in paragraph 149 of the Third Amended Complaint.

7 150. In response to paragraph 150 of the Third Amended Complaint, Defendants deny
8 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
9 allegations contained in paragraph 150 of the Third Amended Complaint.

10 151. In response to paragraph 151 of the Third Amended Complaint, Defendants deny
11 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
12 allegations contained in paragraph 151 of the Third Amended Complaint.

13 152. In response to paragraph 152 of the Third Amended Complaint, Defendants deny
14 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
15 allegations contained in paragraph 152 of the Third Amended Complaint.

16 153. In response to paragraph 153 of the Third Amended Complaint, Defendants deny
17 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
18 allegations contained in paragraph 153 of the Third Amended Complaint.

19 154. In response to paragraph 154 of the Third Amended Complaint, Defendants deny
20 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
21 allegations contained in paragraph 154 of the Third Amended Complaint.

22 155. In response to paragraph 155 of the Third Amended Complaint, Defendants deny
23 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
24 allegations contained in paragraph 155 of the Third Amended Complaint.

25 156. In response to paragraph 156 of the Third Amended Complaint, Defendants deny
26 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
27 allegations contained in paragraph 156 of the Third Amended Complaint.

28 157. In response to paragraph 157 of the Third Amended Complaint, Defendants deny

1 that the requested relief, or any relief whatsoever, is appropriate. Defendants deny the remaining
2 allegations contained in paragraph 157 of the Third Amended Complaint.

3 158. Defendants deny each and every allegation contained in the Third Amended
4 Complaint not specifically admitted to be true herein.

5 **FIRST AFFIRMATIVE DEFENSE**

6 159. Plaintiffs' Third Amended Complaint fails to state a claim upon which relief may
7 be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 160. Plaintiffs' claims, in whole or in part, are barred by applicable statutes of
10 limitations.

11 **THIRD AFFIRMATIVE DEFENSE**

12 161. Plaintiffs' Third Amended Complaint is barred in whole or in part by the doctrines
13 of waiver, estoppel, and laches.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 162. This action is not maintainable as a class action under Fed. R. Civ. P. Rule 23.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 163. Plaintiffs are estopped by their own actions and conduct from asserting any cause
18 of action against Defendants.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 164. Plaintiffs have engaged in conduct and activities sufficient to constitute a waiver
21 of any right to assert the claims upon which they now seek relief.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 165. Plaintiffs' Third Amended Complaint is barred by the doctrine of unclean hands.

24 **EIGHTH AFFIRMATIVE DEFENSE**

25 166. Some or all of the Plaintiffs' causes of action are barred by their failure timely to
26 exhaust administrative remedies with respect to each Defendant.

27 **NINTH AFFIRMATIVE DEFENSE**

28 167. All of the actions of Defendants taken towards Plaintiffs' employment were taken

1 for legitimate, non-discriminatory reasons.

2 **TENTH AFFIRMATIVE DEFENSE**

3 168. Defendants' policies and practices are job-related and consistent with business
4 necessity.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 169. Plaintiffs have failed to mitigate their damages, if any.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 170. To the extent Plaintiffs or the class seek punitive or exemplary damages, they are
9 barred or limited by the Due Process Clause of the Fourteenth Amendment of the United States
10 Constitution. *See State Farm Mutual Automobile Insurance Co. v. Campbell*, -- U.S. --, 123 S.
11 Ct. 1513 (2003).

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 171. This Court lacks personal jurisdiction over some or all Defendants.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 172. The Northern District of California is an improper venue for this action.

16 **FIFTEENTH AFFIRMATIVE DEFENSE**

17 173. Some or all of Plaintiffs' claims fail because Plaintiffs have an adequate remedy at
18 law.

19 WHEREFORE, Defendants Abercrombie & Fitch Stores, Inc., A&F California, LLC, and
20 A&F Ohio, Inc. respectfully request that Plaintiffs' Third Amended Complaint be dismissed with
21 prejudice in its entirety with all costs assessed against Plaintiffs, and that the Court grant such
22 further relief as it deems just and proper at law or in equity.

PROOF OF SERVICE

I, Patricia Voight, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Russ Building, 30th Floor, 235 Montgomery Street, San Francisco, California 94104. On June 21, 2004, I served a copy of the within document(s):

ANSWER OF DEFENDANTS ABERCROMBIE & FITCH CO., ABERCROMBIE & FITCH STORES, INC., A&F CALIFORNIA, LLC, AND A&F OHIO, INC., TO THIRD AMENDED COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a agent for delivery.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

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1 I am readily familiar with the firm's practice of collection and processing correspondence
2 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
3 day with postage thereon fully prepaid in the ordinary course of business.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on June 21, 2004, at San Francisco, California.

6 /S/ Patricia Voight
7 Patricia Voight
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